STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of S.Y., S.Y., and G.Y., Minors.

WILLIAM YEE,

Petitioner-Appellant,

v

CHRISTINE ROCHE,

Respondent-Appellee,

and

FAMILY INDEPENDENCE AGENCY,

Appellee.

UNPUBLISHED
June 14, 2002

No. 237869
Shiawassee Circuit Court
Family Division
LC No. 01-009756-NA

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Petitioner appeals as of right from the family court's July 20, 2001, order assuming jurisdiction over the minor children and making them temporary wards of the court.[1] We affirm.

[1] The family court's July 20, 2001, order reflects that a dispositional hearing was scheduled for October 29, 2001. However, a review of the July 16, 2001, transcript indicates that the trial court began the dispositional phase after acquiring jurisdiction over the children on that date. It appears that petitioner initially filed a claim of appeal from the July 20, 2001, order on October 5, 2001, in Docket No. 237079. On October 31, 2001, the family court entered an order dismissing its jurisdiction over the minor children. Further, during both the July 16, 2001, hearing and a hearing conducted on October 29, 2001, the family court concluded that termination of respondent's parental rights was not warranted. Petitioner's original claim of appeal was dismissed for lack of jurisdiction. *In re Yee Minors*, unpublished order of the Court of Appeals,
(continued…)

Petitioner first argues that the family court erred in ordering that the children be sequestered at the initial hearing on July 16, 2001, on the basis that they were scheduled to testify as witnesses. Petitioner contends that the children had the right to be present throughout the proceedings because they were parties to the proceeding. We disagree.

The decision whether to sequester witnesses is generally left to the family court's discretion. *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993). Petitioner is correct that a child who is the subject of a child protective proceeding is considered a party. MCR 5.903(A)(13)(b). The child must be appointed counsel and the attorney for the child must be present at every hearing. MCR 5.915(B)(2). However, at a hearing concerning a petition to assume jurisdiction, the child is not required to be present. Specifically, MCR 5.972(B)(1) provides that in preliminary proceedings, "[t]he child may be excused as the court determines the child's interests require." Similarly, a child is not required to be present at the dispositional phase. In this regard, MCR 5.973(3)(a) provides that a "child may be excused from the dispositional hearing as the interests of the child require provided that the child's guardian ad litem or attorney is present at the hearing." Thus, it is apparent that a court has discretion to exclude a child from child protection proceedings as the child's interests require. Under the circumstances, we are not persuaded that the family court abused its discretion in ordering the children sequestered.

In a largely incoherent argument in his brief on appeal, petitioner also argues that the family court erred in not allowing him to present additional evidence at the initial dispositional hearing concerning his petition to terminate respondent's parental rights. We disagree. Pursuant to MCR 5.971(A), the family court was authorized to accept a plea of admission from respondent in order to acquire jurisdiction over the children. *In re AMB*, 248 Mich App 144, 176, n 43; 640 NW2d 262 (2001). Here, respondent entered a plea of admission to the relevant allegations in the petition, thereby alleviating the need for an adjudicative hearing on the petition. *Id*. Thus, contrary to petitioner's implied argument on appeal, the parties did not stipulate or improperly consent to the family court's assumption of jurisdiction. See, e.g., *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). Indeed, the court independently determined that respondent's admissions established factual support for a finding of jurisdiction.

Further, we reject petitioner's claim that his due process rights were violated because the family court did not conduct a full evidentiary hearing before determining that termination of respondent's parental rights was not warranted. The family court's decision to exclude evidence at a dispositional hearing is reviewed for an abuse of discretion. *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). In the instant case the family court declined to allow petitioner to present testimony from the children regarding the allegations of physical abuse, in part because of respondent's admission of abuse. Because respondent admitted to the allegations in the petition, it was unnecessary to establish those allegations through a full hearing. See, e.g., *AMB*, *supra* at 176, n 43. Indeed, we are satisfied that petitioner received due process because he was

(…continued)

issued November 29, 2001 (Docket No. 237079). Petitioner filed the claim of appeal in the present appeal on November 16, 2001.

given ample opportunity to be heard "in a meaningful time and manner" by an impartial decisionmaker regarding his petition. *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000).[2]

Finally, petitioner argues that the family court erred in denying his motion for rehearing of the court's decision not to hear further evidence and to not terminate respondent's parental rights. Because petitioner did not support his rehearing motion with any new argument not previously presented to the court, we are not persuaded that the court abused its discretion in denying petitioner's motion. MCR 5.992(A); *In re Toler*, *supra* at 478.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

[2] Moreover, we disagree with petitioner's contention that the plain language of MCR 5.974(D) imposed a duty on the trial court to conduct a full evidentiary hearing during the dispositional phase.